

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

SB 2781 - HB 2948

March 14, 2012

SUMMARY OF BILL: Requires the court to verify the accused's sources of income and property interests when the accused seeks to be declared indigent. Directs that if the accused has or expects an equity interest in personal or real property having a net value of at least \$2,500, excluding the value of the accused's homestead and one vehicle having a net value not exceeding \$5,000, or the accused has retained private counsel immediately before or after filing an affidavit of indigency, the accused must be presumed to not be indigent. Establishes a presumption of non-indigency if the accused has posted a cash bond of \$5,000 or more.

Removes the reasonable cause requirement, and requires, regardless of whether the court has reasonable cause to believe the accused is not indigent, the court to verify the accused's income with any state agency or political subdivision. Requires the Court Clerk to conduct a property record review for the county in which the accused resides or owns any assets or property and to search motor vehicle title and registrations. Authorizes the court or court clerk to contract with third parties to perform the verification of income and property ownership functions. Authorizes the court to contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by a public defender's office.

Directs that any court ordered payments to defray a portion of the accused's representation be a lien against the accused in favor of the state. Requires the Administrative Office of the Courts (AOC) to create an affidavit of indigency reflecting these requirements. Establishes the procedure for attempting to recoup costs relative to the appointment of counsel in a criminal case. Establishes the manner in which the administrative fee is to be collected by the court.

Requires the Supreme Court to create a rule establishing the qualifications of appointed counsel in non-capital criminal cases, and the standards for appointing private counsel. Authorizes the Supreme Court to establish a peer review system for approval of non-routine fees and expenses incurred by appointed counsel. Authorizes the Supreme Court to adopt rules for contracting with expert witnesses. Requires such rules to allow contracts with out-of-state experts only if in-state experts are unavailable or are more expensive.

Requires the AOC to process payments quarterly for all compensation orders received out of money as appropriated in the Appropriations Act. Establishes procedures for payments if requested compensation is greater than the appropriation.

Increases, from \$400 to \$600, the privilege tax for attorneys. Requires the \$200 increase to be credited to the Indigent Defense Fund for providing legal services for persons accused of criminal offenses.

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ESTIMATED FISCAL IMPACT:

On March 10, 2012, a fiscal note was issued estimating a fiscal impact as follows:

Increase State Revenue - \$4,269,600/Indigent Defense Fund

Increase State Expenditures - \$3,400,000/General Fund

Increase Local Expenditures – Exceeds \$48,000/Mandatory*

Based upon additional information received from the Clerks of Court Conference, the estimated impact is:

(CORRECTED)

Increase State Revenue - \$4,269,600/Recurring/Indigent Defense Fund

Increase State Expenditures - \$3,200/One-Time/General Fund

\$5,130,600/Recurring/General Fund

Increase Local Expenditures - \$6,581,800/Recurring/Mandatory*

Assumptions:

- Based upon information provided by the AOC, any rule and form changes can be accomplished utilizing existing resources.
- Based upon information provided by the Clerks of Court Conference and AOC, the increased workload for the clerks' offices will require an average of two additional clerks' employees per county.
- The recurring increase in local expenditures is approximately \$6,581,790 [(\$25,000 salary + \$9,641 benefits) x 2 employees x 95 counties].
- According to the AOC, there are currently 21,348 licensed attorneys in the state. A \$200 increase in the privilege tax will result in a recurring increase in state revenue of \$4,269,600 (21,348 attorneys x \$200 increase).
- The AOC pays the privilege tax for 110 attorneys. The recurring increase in state expenditures is \$22,000 (110 attorneys x \$200 increase).
- According to the Department of Revenue, state departments and agencies pay the privilege tax for approximately 17,000 attorney employees. Therefore, the recurring increase in state expenditures is estimated to be \$3,400,000 (17,000 employees x \$200 increase).
- The AOC processes 25,000 attorney claims per quarter. This bill will result in each claim being processed twice. Because of the high volume, claims will continue to be processed as they are received. At the end of each quarter, the AOC will compare the payments sought to the available funds and apply the necessary reduction to each claim.
- The AOC will contract with at least one attorney in each of the 31 judicial districts to collect and enforce judgments owed to the state. The recurring increase in state expenditures is approximately \$1,550,000 (\$50,000 per attorney x 31).

- The AOC will hire four additional employees to handle the increased workload. The recurring increase in state expenditures is \$158,572 [(\$28,000 salary + \$11,643 benefits) x 4 employees].
- The total recurring increase in state expenditures is \$5,130,570 (\$22,000 + \$3,400,000 + \$158,570 + \$1,550,000).
- The AOC will purchase computers for the new employees. The one-time increase in state expenditures is \$3,200 (\$800 computer x 4 employees).
- Assuming the Department of Children's Services will not be required to provide individual's tax information in conflict with federal tax confidentiality laws, the Department's federal funding will not be jeopardized.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/sbh